

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Improving Competitive Broadband Access to)	GN Docket No. 17-142
Multiple Tenant Environments)	
)	

**REPLY COMMENTS OF
REALTYCOM PARTNERS**

September 27, 2019

INTRODUCTION.

RealtyCom Partners ("RealtyCom") is a telecommunications management consulting firm serving multifamily owners, developers, and property managers who collectively own or manage properties in 41 states across a wide spectrum of property types, including affordable, senior, market rate, and luxury apartment homes. RealtyCom submits these reply comments to the Federal Communications Commission ("FCC" or "Commission") in response to the Commission's Notice of Proposed Rulemaking and Declaratory Ruling ("NPRM") adopted July 10, 2019, in the matter of Improving Competitive Broadband Access to Multiple Tenant Environments ("MTEs").

I. SUMMARY

INCOMPAS claims that revenue share arrangements, exclusive marketing arrangements, and arrangements for exclusive use of designated wiring have discernible anticompetitive effects in MTEs, resulting in residents having limited choices: "typically a monopoly and at best a duopoly".¹ The group claims that, when combined, "these practices amount to a firewall that results in *de facto* exclusive access...."² These are specific *factual* claims, serving as the primary

¹ Comments of INCOMPAS, August 30, 2019, GN Docket No. 17-142, p. 6.

² Comments of INCOMPAS, August 30, 2019, GN Docket No. 17-142, p. 16.

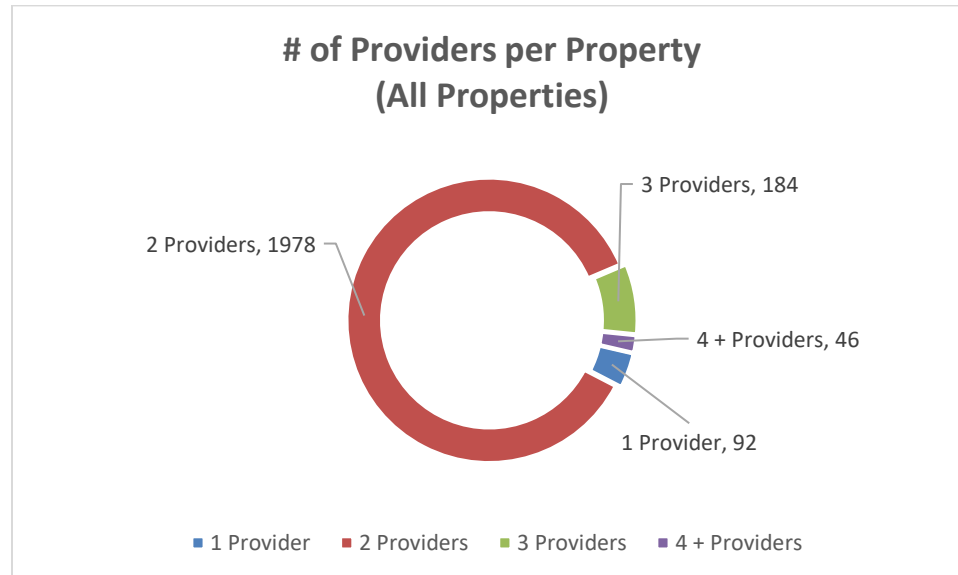
basis for its desire for further rulemaking. Yet INCOMPAS still offers no data to substantiate the claims, nor does it acknowledge or rebut the volume of statistical evidence put forth by MTE owners, representatives, and trade groups, during the Notice of Inquiry, that show strong competition in residential MTEs. In this Notice of Proposed Rulemaking, commenters have produced further statistical evidence that residential MTE competition is thriving.³

RealtyCom adds to that body of evidence here. The numbers provided here are from a data set of RealtyCom's MTE owner clients, which collectively own or manage approximately 2,300 apartment communities, totaling approximately 527,000 apartment homes, in 41 states.



³ Joint Comments of the National Multifamily Housing Council, The National Apartment Association, The International Council of Shopping Centers, The Institute of Real Estate Management, NAREIT, The National Real Estate Investors Association, and The Real Estate Roundtable (the "Real Estate Associations"), August 30, 2019, Docket No. GN 17-142, pp. 65-7.

II. "Typically a monopoly and at best a duopoly"?



Contrary to INCOMPAS's claims about the state of the MTE market, properties with a single provider are far from "typical." Our data show that, of the apartment communities our clients own and/or manage, only 92 communities—or approximately 4%—have a single provider available to residents.⁴

INCOMPAS characterizes properties with two broadband providers as atypical. Yet, of our data set, 96% of the apartment communities have two or more providers. Broadband competition within MTEs is not an outlier. It is the *norm*.

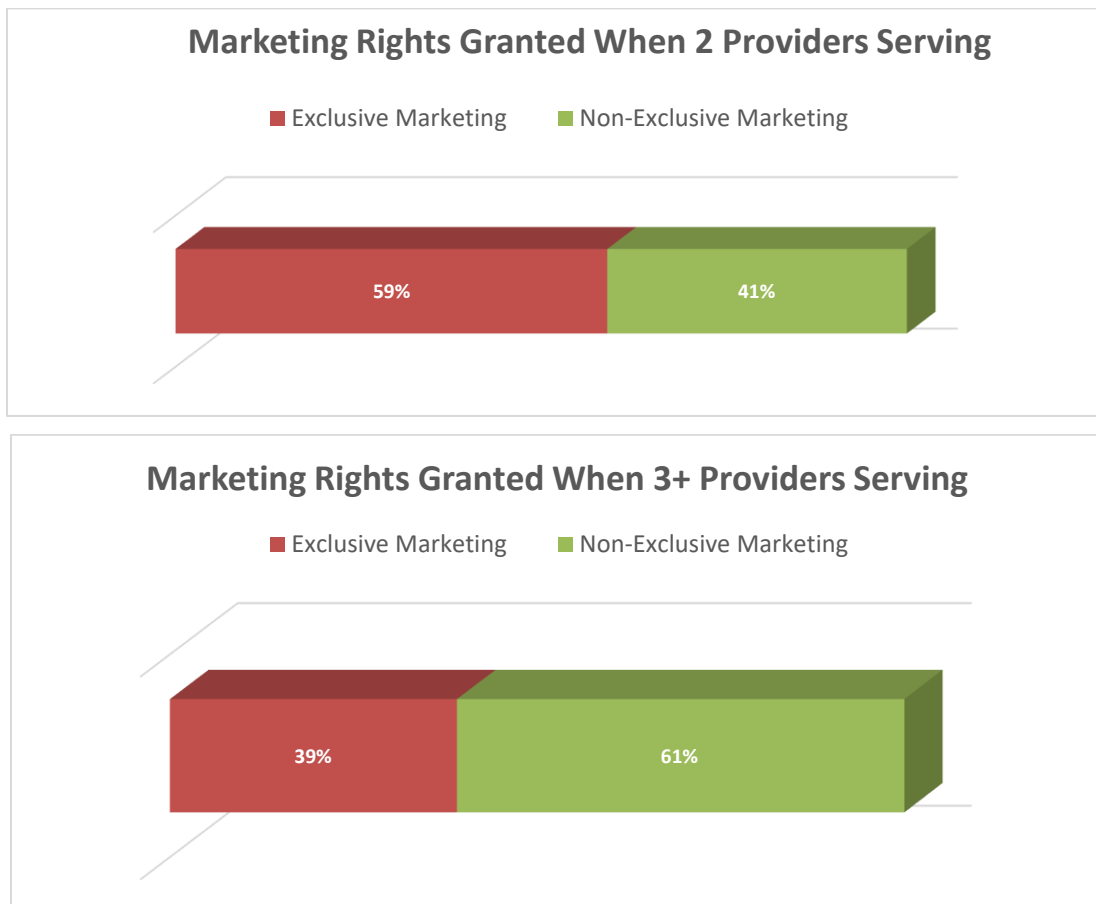
In saying that MTE residents have "at best a duopoly," INCOMPAS suggests that common marketing and wiring arrangements preclude a property having more than two service

⁴ Uncommon though it may be, having a single provider is often through no deliberate choice. In most cases it arises from lack of *supply*, not of demand on the part of the MTE owner or residents. RealtyCom has seen nearly 300 properties where one or more incumbent providers declined to provide a proposal to serve. In their comments, the Real Estate Associations state, "although the title of this proceeding is 'Improving Competitive Access to Multiple Tenant Environments,' the NPRM asks no questions about the difficulties apartment, commercial and retail property owners sometimes face in attracting competitive providers" (Joint comments of the Real Estate Associations, August 30, 2019, Docket No. GN 17-142, p. 21).

providers. However, of the apartment communities in our data set, 10% have three or more providers—more than twice the percentage that have a single provider.

Our data, like those offered by the Real Estate Associations in their comments, show a market that works for MTE residents, ensuring broadband availability and, generally, a choice of providers.

III. Exclusive marketing as "*de facto* exclusive access"?



INCOMPAS claims that the use of exclusive marketing arrangements "significantly inhibits competition in MTEs, particularly when used in conjunction with revenue sharing agreements or wiring exclusivity. When used in tandem, these practices amount to a firewall that results in *de facto* exclusive access and serves no legitimate purpose other than to protect incumbents and prevent competitive providers from successfully accessing an MTE."⁵

⁵ Comments of INCOMPAS, August 30, 2019, GN Docket No. 17-142, p. 16.

Our data show that, of the apartment communities our clients own and/or manage, 59% of properties with two providers serving have an exclusive marketing agreement in place with one of the providers. Of the apartment communities with three or more providers serving, 39% have an exclusive marketing agreement in place with one of the providers.

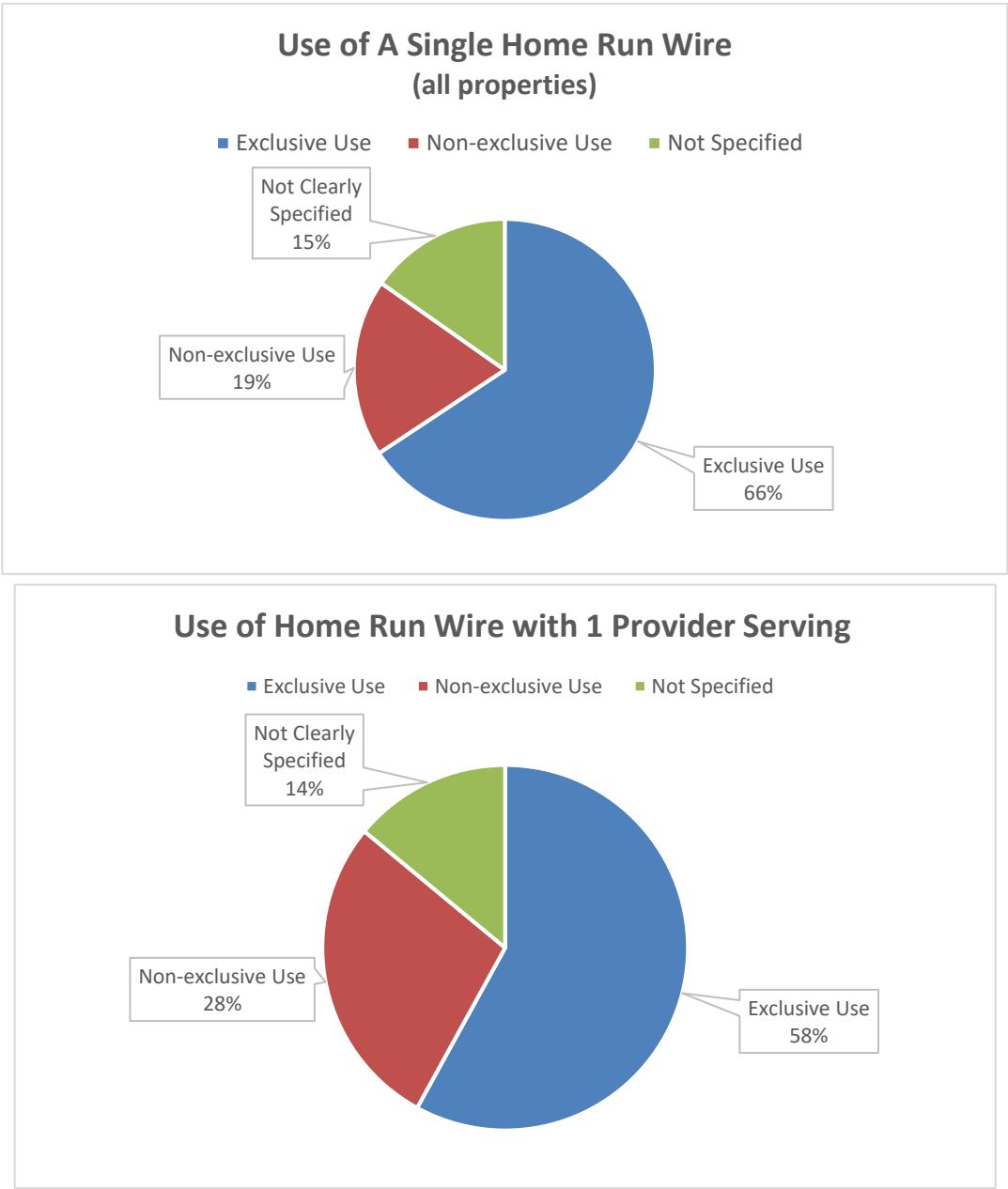
These data show that exclusive marketing arrangements do not inhibit competition in MTEs in any meaningful way, much less serve as "firewalls" or "*de facto* exclusive access." Providers that offer great service at competitive prices are more than able to compete in MTEs.⁶ RealtyCom often witnesses service providers perform very well without marketing rights—in some cases better than incumbents that were granted exclusive marketing. Two recent examples:

- In a large, newly built property in Denver, one provider was granted exclusive marketing rights and another was granted no marketing rights. The provider without marketing rights is substantially outpacing its competitor in Internet subscription rates (i.e., 62% of the residents subscribing to Internet use the provider without marketing rights).
- In four recently built properties in Seattle, the incumbent cable company was granted exclusive marketing rights and an independent competitive ISP was granted no marketing rights. On average across all four properties, the competitive ISP is matching the cable company, with each having 50% of the Internet subscribers. However, on two of the properties, the competitive ISP has

⁶ Some NPRM commenters object to exclusive marketing arrangements because they preclude other providers from marketing on site by "distributing door hangers or visiting tenants to introduce them to the new service." (Comments of INCOMPAS, August 30, 2019, GN Docket No. 17-142, p. 12. See also Comments of Starry, Inc., August 30, 2019, GN Docket No. 17-142, p. 9.) These commenters seem unaware that most MTE owners prohibit or severely curtail door-to-door marketing and carefully restrict other on-site marketing activities *even in exclusive marketing contracts*. Apartment residents don't appreciate salespeople knocking on their door; and MTE managers don't wish to devote resources to cleaning up hundreds of door hangers or fliers from corridors, porches, and parking lots, after a service provider's carpet bombing.

surpassed the cable company, with as many as 60% of the Internet subscribers at the properties.

IV. Exclusive use of designated wiring as "end run around inside wiring rules"?



RealtyCom's data set also sheds light on the commonality and competitive impact of arrangements for the exclusive use of designated wiring. A review of our data reveals that, across all properties, exclusive use of home run wiring is granted in 66% of agreements. In the 4% of properties currently served by a single provider, only 58% of agreements grant exclusive

use of designated wiring. Keeping in mind that, as shown above, 96% of the properties have two or more service providers, granting exclusive use of designated wiring clearly has no negative effect on competition within the properties. On the contrary, RealtyCom would argue that the ability to grant exclusive use of designated wiring is among an owner's few tools in spurring investment from competitive providers, whether in new construction or in a subsequent overbuild.

Investment incentives must remain at the forefront of policymaking analysis. INCOMPAS states, "The existence of available inside wiring can significantly alter the economics of serving an MTE."⁷ While undeniable, that is as trivially true as saying, "The existence of available land can significantly alter the economics of building an MTE." Wiring, like land, isn't a public good. *Someone* has to pay for it. As we noted in our reply comments to the NOI (after showing actual language from INCOMPAS members' contracts), "When Google Fiber, Rocket Fiber, WOW, and Verizon install home run wiring, they *do not* immediately give it up for common use by their competitors.... The business practices of INCOMPAS's members do not support, but rather *refute*, the spurious claim that there is no relationship between a provider's exclusive right to *use* wiring and its willingness to bear the cost of *installing* that same wiring."⁸

V. Where the MTE market is...and where it's headed.

INCOMPAS expresses a thoroughgoing pessimism about the residential MTE market. They say that, "The lack of competition for broadband service is even more acute in MTEs, including apartment buildings, condominiums, and cooperatives."⁹ They claim that "MTE residents have fewer options for robust, high-speed broadband than consumers living in single-family homes, and the services that are offered are typically more expensive."¹⁰ Characteristically, they offer no evidence, data, or statistics in support of these claims. They just cite three online articles that *also* provide no comparative data about broadband availability or pricing in single-family housing and residential MTEs. When MTE owners, representatives, and trade groups have provided evidence disproving these claims over the course of the NOI, INCOMPAS has persisted with its talking points, never acknowledging or rebutting.

⁷ Comments of INCOMPAS, August 30, 2019, GN Docket No. 17-142, p. 14.

⁸ Reply Comments of RealtyCom Partners, August 22, 2017, GN Docket No. 17-142, pp. 10-11.

⁹ Comments of INCOMPAS, August 30, 2019, GN Docket No. 17-142, p. 5.

¹⁰ Comments of INCOMPAS, August 30, 2019, GN Docket No. 17-142, p. 6.

INCOMPAS's dour outlook on the market also clashes with our data on where things are headed. While broadband competition in MTEs has been strong, it's getting stronger yet, under *current* Commission policies. Out of our total data set, 10% of the apartment communities have three or more providers. However, looking only at newly constructed properties that have been completed and opened after January 1, 2016, 29% of the communities have three or more providers, 89% have at least one fiber to the unit provider and only 3% have no providers offering gigabit Internet service. This represents a trend of substantial increases in MTE owner investment, in recent years. As commenters have documented, providing space and facilities for multiple providers is not inexpensive.¹¹ The data tell a story that is inconsistent and irreconcilable with many of the unsubstantiated claims and theories we've read in comments and replies to the NOI and this NPRM.

CONCLUSION.

The hard facts offered in this docket demonstrate that the multifamily real estate industry is highly competitive. Apartment owners, managers, and developers compete to attract and retain residents, and that *requires* that they provide the competitive telecom amenities residents demand. The Commission should not pursue further rulemaking regarding arrangements for monetary consideration, exclusive use of designated wiring, or exclusive marketing rights, as the market is functioning well, with no adverse impact to the availability of broadband services to MTE tenants. Indeed, MTE tenants have more and better service options available to them today than they ever have before.

Respectfully submitted,
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¹¹ Declaration of RealPage in Support of Comments of the Real Estate Associations, August 30, 2019, GN Docket No. 17-142, p. 15. See also, Reply Comments of RealtyCom Partners, August 22, 2017, GN Docket No. 17-142, p. 4-5.